

### **REMARKS**

This Response is submitted in reply to the Non-Final Office Action of August 24, 2006.

Claims 14-29 are pending in the present application and Claims 22 and 24-25 are withdrawn. By this response, Claims 14, 17-18 and 20-21 are amended and Claims 16 and 19 are canceled. No new matter is introduced by any of these amendments. The Commissioner is authorized to charge Deposit Account No. 02-1818 for any fees which are due and owing or to credit any overpayment.

#### **Election of Saline Species**

The Office Action acknowledges Applicant's election of saline as the species to be examined in response to an earlier Election of Species Requirement. However, Applicant respectfully submits that the wrong claims were mistakenly withdrawn as a result of the election of species. Applicant respectfully submits that Claims 1-22, 24 and 27-29 are readable on the saline species with claims 14-22 and 27-29 being generic to two or more of the species, including the species of the substance being saline. As a result, it is respectfully submitted that Claims 23 and 26 should be withdrawn and Claims 22 and 24 should not be withdrawn.

#### **Rejection Under 35 U.S.C. 102(b) or 103(a)**

The Office Action rejected Claim 14 under 35 U.S.C. 102(b) as being anticipated by Hayashi et al. (Retinal Changes after Retinal Translocation Surgery with Scleral Imbrication in Dog Eyes, 2000, hereinafter "Hayashi"). Alternatively, the Office Action appears to reject Claim 14 under 35 U.S.C. 103(a) as obvious in view of Hayashi, stating, "although all the steps required by instant claims are not explicitly stated in the cited reference, it would have been obvious to one of ordinary skill in the art to perform retinal translocation surgery performing step by step procedure because to perform the surgery it is essential step to go thru each steps even though the terms are different in instant claims from cited reference."

It appears from the Office Action Summary that the Examiner has also rejected claims 15-21, 23, 26 and 29 as being either anticipated by or obvious in view of Hayashi. Further, the Detailed Action states, "All the claims are properly included in this rejection absent evidence to the contrary." Therefore, Applicant treats all claims as if they are rejected as being anticipated

by or obvious in view of Hayashi; however, Applicant respectfully requests clarification of these rejections.

Applicant respectfully disagrees with the above rejections. Hayashi discloses a foveal translocation surgery in which a retina is folded using five mattress sutures. However, it is respectfully submitted that Hayashi does not disclose or suggest affixing the folded portion with adhesive as in Claim 14 or with a clip as in Claim 17. Further, it is respectfully submitted that Hayashi does not disclose or suggest the adhesive being a bioadhesive as in Claim 20 or polydendrimer as in Claim 21.

To establish a prima facie case of obviousness, the prior art reference must teach or suggest all of the claim limitations. MPEP §2143. As stated above, Hayashi clearly lacks several elements of this claim. Applicant respectfully submits that any suggestion that affixing the fold with adhesive, bioadhesive, polydendrimer or a clip are obvious would be improper hindsight at least because Hayashi does not suggest the use of anything other than perhaps the five mattress sutures to affix a folded portion.

For at least the above reasons, it is respectfully submitted that Claim 14 and its dependent claims are each patentably distinguished from Hayashi and are in condition for allowance. Similarly, it is respectfully submitted that Claim 17 is patentably distinguished from Hayashi and is in condition for allowance.

Further, Applicant notes that Claim 17 was amended; however, the amendment only rewrote Claim 17 in independent form including all of the limitations of the claims upon which it was based. Therefore, this amendment does not change the scope of Claim 17, and it is respectfully submitted that if Claim 17 is rejected based on new grounds in the next Office Action, the rejection would not have been necessitated by this amendment.

Applicant therefore respectfully requests that a Notice of Allowance be issued.

Respectfully submitted,

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